

COMMONWEALTH OF MASSACHUSETTS

CITY OF LOWELL

In City Council

VOTE

Authorizing the City Manager on behalf of the City of Lowell to enter into a Lease Agreement with Nicholas C. Sarris, as Trustee of One Hundred Seven Merrimack Street Realty Trust, for property located at 107 Merrimack Street, in Lowell.

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The City of Lowell is desirous of renting space at 107 Merrimack Street, (basement, a portion of the third floor and the fourth floor) consisting of 10,368 square feet, more or less, to be used for housing the Health, Human Services and Recreation Department; and

The City of Lowell issued its Request for Proposals for Lease of Space for the Health, Human Services and Recreation Department for a ten (10) year period; and

Nicholas C. Sarris, as Trustee of One Hundred Seven Merrimack Street Realty Trust is the owner of the premises at 107 Merrimack Street, in Lowell and has submitted a proposal to the City in response to the Request for Proposals;

NOW, THEREFORE, BE IT VOTED BY THE CITY COUNCIL OF THE CITY OF LOWELL, as follows:

That the City Manager be and is hereby authorized to enter into a Lease Agreement with Nicholas C. Sarris, as Trustee of One Hundred Seven Merrimack Street Realty Trust, for property located at 107 Merrimack Street, in Lowell, consisting of 10,368 square feet, more or less.

Said Lease shall be for a term of ten (10) years, terminating on December 31, 2029, subject to annual appropriation, and shall be in accordance with the form, or substantially the form, attached hereto.

Such lease payments shall be as follows:

1 <sup>st</sup> year	-	\$236,499.00 (\$19,708.25 per month at \$22.81 per s.f.)
2 <sup>nd</sup> year	-	\$237,676.00 (\$19,806.33 per month at \$22.92 per s.f.)
3 <sup>rd</sup> year	-	\$237,676.00 (\$19,806.33 per month at \$22.92 per s.f.)
4 <sup>th</sup> year	-	\$237,676.00 (\$19,806.33 per month at \$22.92 per s.f.)
5 <sup>th</sup> year	-	\$237,676.00 (\$19,806.33 per month at \$22.92 per s.f.)
6 <sup>th</sup> year	-	\$243,618.00 (\$20,301.50 per month at \$23.50 per s.f.)
7 <sup>th</sup> year	-	\$249,708.00 (\$20,809.00 per month at \$24.08 per s.f.)
8 <sup>th</sup> year	-	\$255,951.00 (\$21,329.25 per month at \$24.69 per s.f.)

9 <sup>th</sup> year	-	\$262,350.00 (\$21,862.50 per month at \$25.30 per s.f.)
10 <sup>th</sup> year	-	\$268,908.00 (\$22,409.00 per month at \$25.94 per s.f.)

BE IT FURTHER VOTED:

That the Lease Agreement shall contain other terms and conditions as the City Manager deems to be in the best interest of the City of Lowell.

vote:re:107merrimackst

## LEASE

This Lease made as of the Fourteenth day of November, 2019, by and between NICHOLAS C. SARRIS, AS TRUSTEE OF THE ONE HUNDRED SEVEN MERRIMACK STREET REALTY TRUST, (hereinafter designated as the "Landlord") and the HEALTH, HUMAN SERVICES and RECREATION DEPARTMENTS, Lowell, Massachusetts (hereinafter designated as the "Tenant"):

WITNESSETH:

That Landlord, in consideration of the rent to be paid and the covenants and agreements to be performed by Tenant, hereby demises, grants and leases to Tenant; and Tenant hereby rents from Landlord the premises hereinafter described, upon the terms and conditions hereinafter set forth, as well as in accordance with all the terms and conditions set forth in the City of Lowell's July 24, 2019 Request for Proposals, marked as Exhibit "A" and attached hereto and incorporated by reference, as well as the Proposal from "One Hundred Seven Merrimack Street Realty Trust," and Sarris, marked as Exhibit "B" and attached hereto and incorporated by reference.

### 1. Description

(a) The proposed lease of space is located on floors basement, portions of the third floor, and the fourth floor of 107 Merrimack Street, Lowell, MA. The premises hereby demised are hereinafter referred to as the "Leased Premises".

(b) The Leased Premises consist of the basement, portions of the third floor, and the fourth floors of the "CWT Building" at 107 Merrimack Street hereinabove described as outlined on Exhibit "A": excluding exterior faces of exterior walls and excluding pipes, ducts, conduits, wires and appurtenant fixtures serving exclusively or in common with other parts of the Buildings. The number of square feet of area contained in said Leased Premises is approximately 10,368 sq. ft. of walled and cubed space.

### 2. Modifications to Leased Premises

(a) Landlord shall use its best efforts to complete its work described in EXHIBIT "B" on or before the Commencement Date of this Lease January 1, 2020.

(b) Any proposed changes would be conducted at the convenience of the agency and at a mutually agreed upon time so as not to be disruptive to the tenant.

### 3. Fixtures, Machinery and Equipment

(a) All lighting fixtures, heating, ventilating, air conditioning, plumbing and electrical equipment, piping and wiring, including conduit for computer service at the Leased premises and any replacement thereof, whether owned by Landlord at the commencement of the



term, subsequently purchased by Landlord, or purchased by Tenant in accordance with the provisions of this Lease shall be the property of Landlord, except those items installed by Tenant pursuant to Section 10 hereof.

(b) Trade fixtures, furniture, computers and other machinery and equipment which are leased, supplied, purchased and used by Tenant in the conduct of its business shall be property of Tenant or, if such property is leased, of Tenant's lessor, or of any secured party with respect to any such property, subject to a security interest, and may be removed by Tenant or its lessor or secured party at any time prior to or upon termination of this Lease. Tenant may, at its election, at no cost to Landlord, cause any of its personal property to be removed at the expiration of the term and repair any damage to the Leased Premises caused by such removal. Any property not removed within sixty (60) days after expiration of the Lease shall be deemed abandoned, and Tenant shall be responsible to Landlord for any reasonable costs incurred by Landlord in the removal of such abandoned personal property.

(c) Currently Category 5 wiring and a fiber connection to City Hall presently serve the building. The Landlord will provide Category 6 wiring.

(d) The Tenant shall have access to property management staff during regular office hours.

4. Term: Commencement Date

TO HAVE AND TO HOLD the Leased Premises for the term of ten (10) years, commencing on January 1, 2020 (such date being called "Commencement Date"), terminating on December 31, 2029, subject to annual appropriation. Said term is hereinafter referred to as the "Term of the Lease".

5. Annual Fixed Rent

Tenant shall pay, or cause to be paid, to Landlord, without any setoff or deduction whatsoever (except as may be otherwise herein expressly provided) and without any prior demand therefor, at such place as Landlord shall designate in writing from time to time, the sum of TWO HUNDRED THIRTY SIX THOUSAND FOUR HUNDRED NINETY NINE AND 00/100 (\$236,499.00) per year from January 1, 2020 through December 31, 2020 at the rate of NINETEEN THOUSAND SEVEN HUNDRED EIGHT AND 25/100 (\$19,708.25) DOLLARS per month; the sum of TWO HUNDRED THIRTY SEVEN THOUSAND SIX HUNDRED SEVENTY SIX AND 00/100 (\$237,676.00) per year for January 1, 2021 through December 31, 2021 at the rate of NINETEEN THOUSAND EIGHT HUNDRED SIX AND 33/100 (\$19,806.33) DOLLARS per month; the sum of TWO HUNDRED THIRTY SEVEN THOUSAND SIX HUNDRED SEVENTY SIX AND 00/100 (\$237,676.00) per year for January 1, 2022 through December 31, 2022 at the rate of NINETEEN THOUSAND EIGHT HUNDRED SIX AND 33/100 (\$19,806.33) DOLLARS per month; the sum of TWO HUNDRED THIRTY SEVEN THOUSAND SIX HUNDRED SEVENTY SIX AND 00/100 (\$237,676.00) per year for January 1, 2023 through December 31, 2023 at the rate of

NINETEEN THOUSAND EIGHT HUNDRED SIX AND 33/100 (\$19,806.33) DOLLARS per month; the sum of TWO HUNDRED THIRTY SEVEN THOUSAND SIX HUNDRED SEVENTY SIX AND 00/100 (\$237,676.00) per year for January 1, 2024 through December 31, 2024 at the rate of NINETEEN THOUSAND EIGHT HUNDRED SIX AND 33/100 (\$19,806.33) DOLLARS per month; the sum of TWO HUNDRED FORTY THREE THOUSAND SIX HUNDRED EIGHTEEN AND 00/100 (\$243,618.00) per year for January 1, 2025 through December 31, 2025 at the rate of TWENTY THOUSAND THREE HUNDRED ONE AND 50/100 (\$20,301.50) DOLLARS per month; the sum of TWO HUNDRED FORTY NINE THOUSAND SEVEN HUNDRED EIGHT AND 00/100 (\$249,708.00) per year for January 1, 2026 through December 31, 2026 at the rate of TWENTY THOUSAND EIGHT HUNDRED NINE AND 00/100 (\$20,809.00) DOLLARS per month; the sum of TWO HUNDRED FIFTY FIVE THOUSAND NINE HUNDRED FIFTY ONE AND 00/100 (\$255,951.00) per year for January 1, 2027 through December 31, 2027 at the rate of TWENTY ONE THOUSAND THREE HUNDRED TWENTY NINE AND 25/100 (\$21,329.25) DOLLARS per month; the sum of TWO HUNDRED SIXTY TWO THOUSAND THREE HUNDRED FIFTY AND 00/100 (\$262,350.00) per year for January 1, 2028 through December 31, 2028 at the rate of TWENTY ONE THOUSAND EIGHT HUNDRED SIXTY TWO AND 50/100 (\$21,862.50) DOLLARS per month; and the sum of TWO HUNDRED SIXTY EIGHT THOUSAND NINE HUNDRED EIGHT AND 00/100 (\$268,908.00) per year for January 1, 2029 through December 31, 2029 at the rate of TWENTY TWO THOUSAND FOUR HUNDRED NINE AND 00/100 (\$22,409.00) DOLLARS per month.

Total Annual Fixed Rent payments during the entire ten (10) year Term of the Lease shall not exceed TWO MILLION FOUR HUNDRED SIXTY SEVEN THOUSAND SEVEN HUNDRED THIRTY EIGHT AND 00/100 (\$2,467,738.00) DOLLARS.

The obligations of the City hereunder shall be subject to annual appropriation on a fiscal year basis. In the absence of appropriation, this Lease shall be terminated by the City immediately without liability of the City for damages, penalties, or other charges arising from early termination. Payment shall be made no later than the twentieth day of the month for all rental due for the previous month, all in accordance with the Reserve Ordinance referred to in Paragraph (23) of this lease.

6. Use of Leased Premises

(a) It is understood, and Tenant so agrees, that the Leased Premises, during the term hereof, shall be used for the following primary purpose: To provide lease space to the Health, Human Services, and Recreation Departments of the City of Lowell.

b) Tenant further agrees to conform to the following non-discriminatory provisions during the term of this Lease:

(1) No auction, fire, bankruptcy or going out of business or similar sales may be conducted or be advertised as being conducted within the leased premises without the written consent to the Landlord;



(2) Tenant shall not use the sidewalks adjacent to the leased premises for business purposes without the previous written consent of Landlord;

(3) Tenant shall keep the windows of the leased premises such as to conform to any preservation easements, city or state laws or ordinances and regulations;

(4) Tenant shall receive and deliver supplies only in the manner, at such times, and in such areas, as may be reasonably designated by the Landlord and in such a manner so as not to obstruct the other occupants of the building and sidewalk adjacent thereto;

(5) Tenant shall not place on the interior of windows or exterior of the leased Premises any signs or any other symbol, advertisement, light or other object or thing visible to public view outside the leased premises without the prior consent of Landlord, and in each case, in accordance with preservation easements, and city and state laws, or ordinances and regulations;

(6) All garbage and refuse shall be kept in the kind of container specified by Landlord, and shall be placed in the premises prepared for collection, in the manner and at the times and places specified by Landlord, and in no event shall such garbage and refuse be stored or kept in such a manner as to cause in the reasonable opinion of Landlord, a nuisance to the premises of which the demised premises forms a part. Tenant shall be responsible for the removal and proper disposal of its garbage and refuse from the premises. Tenant may use a service for picking up refuse and garbage. Tenant shall pay the cost of removal of all of the Tenant's refuse or rubbish.

(7) Tenant will not drill or make any holes in the stone or brickwork except for those approved by Landlord and the leased premises will not be overloaded, damaged or defaced;

(8) Tenant shall not suffer or permit the Leased Premises or any part thereof to be used in any manner, or anything to be done therein, or suffer or permit anything to be brought into or kept in the Leased Premises which would in any way (i) violate any law or requirement of public authorities, (ii) cause structural injury to the Building or any part thereof, (iii) interfere with the normal operations of the heating, air-conditioning, ventilating, plumbing or other mechanical or electrical systems of the Building or the elevators installed therein, (iv) constitute a public or private nuisance, (v) alter the appearance of the exterior of the Building or of any portion of the interior thereof other than the Leased Premises, except Tenant may maintain its signs as permitted in accordance with this Lease.

(9) Whenever Landlord's approval is required for Tenant's action under any section of this Lease, said approval shall not be unreasonably withheld if consistent and compatible with authorized Tenant's uses of the premises and the Landlord's overall building use plan.

## 7. Landlord's Services

Landlord shall, at its expense, furnish and provide, or cause to be furnished or provided, the following services to the Leased Premises:

(a) All areas of the leased space which are occupied by staff and customers must be provided with fresh air ventilation. HVAC system must be capable of maintaining a winter indoor set point of 72°F. HVAC sound levels are not to exceed a noise criterion (NC) number of 35. Tenant shall be responsible for the gas and electricity costs incurred to operate the systems as measured by meters solely with respect to the Leased Premises.

(b) Landlord agrees to remove all snow and ice from the sidewalks adjacent to the leased premises according to the rules and regulations promulgated under the ordinances of the City of Lowell.

(c) Landlord shall provide, at its expense, water and sewer for lavatory and general use in the Leased Premises.

(d) Landlord shall provide and maintain elevator service to the Leased Premises.

(e) Landlord shall clean the interior and exterior windows at least twice annually at Landlord's sole expense.

(f) Heating and air conditioning plant to be provided by the Landlord. Tenant shall be responsible for the gas and electricity costs incurred to operate the systems as measured by meters solely with respect to the Leased Premises.

(g) The building must comply with building codes for life safety. Life safety hazards detected either before or during occupancy shall be corrected at the Landlord's expense, unless hazard is created by the Tenant's use, in which event Tenant shall be responsible for the cost of such correction.

(h) Proposed building must comply with all applicable federal, state and local code requirements.

(i) During the lease term, the landlord is responsible for replacing with equal goods worn or damaged ceiling tiles, carpet when backing becomes visible or hazardous, and repair and repainting of wall surfaces. All wall surfaces shall be clean, free of holes and/or damage. If new construction, all walls shall be freshly painted prior to occupancy and all wall surfaces shall be touched-up painted annually during the course of the lease.

(j) The Landlord is to provide the continuous routine maintenance and repair and/or replacement of broken glass, roof and ceiling leaks, floors, walls, ceiling, foundation, plumbing, locks, fire protection equipment, lighting fixtures and lamps, heating, ventilation and a/c systems, security systems and elevators. HVAC equipment is to be serviced, filters replaced and diffusers cleaned in accordance with manufacturer's recommendation.



(k) The building must be capable of accommodating the Health, Human Services, and Recreation Departments' voice and data infrastructure.

(l) Conduit must be provided for computer service to all areas, electrical outlets and for phone service to all areas. Electrical service must be of sufficient capacity to provide adequate power for the building's electrical equipment and power required to operate all Lessee's equipment as listed in the Information Technology Detail.

(m) The building must be handicapped accessible in accordance with the requirements of the American Disabilities Act.

(n) There must be a minimum of 2 exits per floor.

(o) Emergency lighting must comply with current code standards within leased premises all along paths of egress. All fire protection equipment and materials must be maintained in accordance with applicable codes and ordinances. This includes, but is not limited to, overhead sprinklers, fire doors, fire walls, stops, fire extinguishers, fire escapes, exit route diagrams, exit signs, emergency lighting and alarm systems.

(p) There must be access to Landlord staff during business via a staffed telephone number during business hours to resolve building problems and/or emergencies.

(q) Landlord reserves the right to interrupt, curtail or suspend the services required to be furnished by Landlord under this Section 7 when the necessity therefore arises by reason of emergency, or when required by any law, order or regulation of any federal, state, county or municipal authority, or for any cause beyond the reasonable control of Landlord. Landlord shall use reasonable diligence to complete all required repairs or other necessary work as quickly as reasonably possible so that Tenant's inconvenience resulting therefrom may be for as short a period of time as circumstances will reasonably permit. In the event Landlord is not reasonably proceeding to rectify the condition causing such interruption, curtailment or suspension, Tenant shall have the right to do whatever acts are necessary to correct such conditions and take credit for the reasonable cost thereof as a credit against the rent then due or to become due in the future to the Landlord.

(r) Must have access to 50 parking spaces within a reasonable walking distance to the facility.

#### 8. Assignment, Subletting

Tenant shall not mortgage, encumber, pledge, sell, assign, or otherwise transfer its interest in this Lease, or sublease all or any part of the Leased Premises, without obtaining in each case Landlord's prior written consent. In the event Landlord consents to any assignment or transfer, from and after the execution and delivery of any assignment or transfer, each subsequent tenant and each such assignee shall be and remain primarily liable, jointly and severally, with the original tenant named as such in this Lease for the payment of Annual Fixed Rent and any additional rent and for the due performance of all the obligations, terms, covenants,



conditions and agreements herein contained on Tenant's part to be performed for the balance of the Term of this Lease; and the obligations of such original Tenant under this Lease shall continue in full force and effect as the obligations of a principal and not as a guarantor or surety. No assignment or transfer shall be binding upon Landlord or any mortgagee, unless the assignee, transferee or Tenant shall deliver to Landlord an instrument which contains a covenant or assumption by the assignee or transferee running to Landlord and all persons claiming by, through or under Landlord of Tenant's obligations under the Lease; but the failure or refusal of the assignee or transferee to execute such instrument of assumption shall not release or discharge the assignee or transferee from its liability as Tenant hereunder. No consent to any sale, assignment, transfer or subletting which may be given by Landlord, shall constitute a waiver by Landlord of the provisions of this section, or a release of Tenant from the full performance by it of the covenants on the part of the Tenant herein contained for the balance of the Term of this Lease; and no consent given by Landlord to any sale, assignment, transfer or subletting shall relieve Tenant of its obligation to obtain the written consent of Landlord to any subsequent sale, assignment, transfer or subletting if such consent is required under the provisions of this section.

9. Maintenance and Repairs

(a) During the Term of this Lease, Landlord, at its sole cost and expense, shall keep in good order, safe condition and repair and replace, where necessary: (i) all structural and exterior portions of the Building, including the roof, the foundation, all structural walls, columns and floor slabs (ii) the common areas and facilities of the Building: (iii) the heating, air conditioning, plumbing, electrical components of the building located within or serving the Leased Premises so long as same has not been damaged as a result of the negligence of Tenant, its agents or servants. Landlord shall not be responsible for repair, maintenance or replacement of Tenant's equipment and furnishings. Landlord shall not be liable in any way for any failure to make such alterations and repairs in the Leased Premises or in other areas, if any, of the Building, exclusively controlled by Tenant, until after reasonable notice from Tenant. Tenant shall designate to Landlord the persons authorized for reporting building problems.

(b) Tenant shall take good care of the Leased Premises, the fixtures, equipment and appurtenances therein and Tenant shall, at Tenant's own expense, make all repairs to the Leased Premises, the fixtures, equipment and furnishings when needed to preserve them in good working order and condition.

(c) The Tenant shall be responsible for any damage to its personal property or its fixtures whether or not caused by fire or other casualty except if caused by the negligence of the Landlord. The Tenant shall be responsible for making all non-structural repairs to the leased premises for any damage caused by the Tenant at the Tenant's sole expense. Tenant shall, at its expense, cause all interior cleaning and maintenance to be performed within the Leased Premises, including trash and rubbish removal and disposal and the replacement of light bulbs.

(d) Tenant shall pay for all gas, electricity, phone service and other utilities used or consumed in the Leased Premises by Tenant except water and sewer.

10. Alteration or Additions



(a) The Tenant shall make no structural alterations, changes and improvements to the interior or exterior of the Leased Premises without the Landlord's prior written consent having first been obtained, which consent shall not be unreasonably withheld or delayed. Tenant shall have the right, at its own expense, by notification to Landlord without necessity of obtaining Landlord's approval, to make such nonstructural alterations, additions, installations, changes and improvements to the Leased Premises as Tenant may deem necessary or desirable for the conduct of its business. Any and all such changes must be in accordance with Preservation Restrictions regarding the building and all local ordinances and by-laws. Any alteration, addition, installation, change or improvement by Tenant shall be performed at the sole risk, cost and expense of Tenant in a good and workmanlike manner so as not to weaken or impair the structure of the Building or otherwise reduce the value of the Building and shall comply with and conform to all requirements, rules, regulations, laws and ordinances of all legally-constituted authorities relating thereto. Such alterations, additions, installations, changes or other improvements (except to the extent they are deemed personal property) shall be and become part of the realty and the sole and absolute property of the Landlord and shall remain upon and be surrendered with the Leased Premises at the expiration or other termination of this Lease. Notwithstanding the foregoing, all trade fixtures and signs installed at any time or times by the Tenant or anyone claiming under Tenant, whether by law deemed to be a part of the realty or not, shall remain the property of the Tenant or persons claiming under Tenant and may be removed by Tenant at any time or times during the term of this Lease, Tenant agreeing to repair any and all damage to the leased premises occasioned by the removal by Tenant or anyone claiming under Tenant of any property from the leased premises.

(b) The Tenant covenants and agrees to indemnify and save Landlord harmless of and from any and all mechanics' liens or claims which may arise as a result of or in connection with any alteration or improvement constructed or placed upon the Leased Premises by the Tenant and to cause to be discharged from the record promptly upon request of the Landlord any notice of contract or mechanics' lien filed by any person furnishing labor or materials in connection therewith.

#### 11. Mortgage of Building and Underlying Land; Estoppel Certificate

(a) The Tenant agrees that upon the request of Landlord it will subordinate this Lease to any present or future mortgage or mortgages upon the land and Building in which the Leased Premises are located, and to any and all advances to be made thereunder, and to the interest thereon, irrespective of the time of execution or time of recording of any such mortgage or mortgages. The word "mortgage" as used herein includes mortgages, deeds of trust or other similar instruments and modifications, consolidations, extensions, renewals, replacements and substitutes thereof. It is expressly understood and agreed, however, that Tenant shall not be obligated to subordinate this Lease and the lien hereof to the lien of any future mortgage unless the holder thereof shall enter into an agreement with Tenant, in recordable form, that in the event of foreclosure or other right asserted under the mortgage by the holder or any assignee thereof, this Lease and all the rights of Tenants hereunder, shall continue in full force and effect and shall not be terminated or disturbed except in accordance with the provisions of this Lease.



(b) Tenant shall, without charge at any time and from time to time, within ten (10) days after request by Landlord, certify by written instrument, duly executed, acknowledged and delivered to any mortgagee, proposed assignee of any mortgage, or proposed purchaser, or any other person, firm or corporation specified by Landlord, to the extent appropriate:

(i) That this Lease is unmodified and in full force and effect (or, if there has been modification, that the same is in full force and effect as modified and stating the modifications);

(ii) Whether or not there are then existing any setoffs or defenses against the enforcement of any of the agreements, terms, covenants or conditions hereof, upon the part of Tenant to be performed or complied with (and, if so, specifying the same); and

(iii) The dates, if any, to which the Annual Fixed Rent and other charges hereunder have been paid in advance.

## 12. Indemnification

Tenant shall indemnify and hold harmless the Landlord from and against any and all liabilities, fines, suits, claims, and demands and actions and costs and expenses of suits, claims, demands and actions and cost and expenses of any kind or nature, due to or arising out of: (i) any damage to property occasioned by Tenant's use and occupancy of the Leased Premises and (ii) any injury, loss, damage or liability to person or persons, including death, resulting at any time therefrom, or to property, occurring in or about the Leased Premises, or on the sidewalks, roadways, access and parking areas and other facilities appurtenant thereto, if under (i) and (ii) such damage, loss, etc., occurs on account of or based upon the omission, fault, negligence or misconduct of the Tenant or other persons for whose conduct the Tenant is legally responsible. This indemnification shall not apply to exculpate or indemnify Landlord for any negligence or fault by Landlord, its agents or employees. If the Tenant is required to defend any action or proceeding pursuant to this section to which action or proceeding Landlord is made a party, Landlord shall be entitled to appear, defend or, otherwise, take part in the matter involved, at Landlord's election, by counsel of Landlord's own choosing, provided such action by Landlord does not limit or make void any liability of any insurer of Landlord or Tenant hereunder in respect to the claim or matter in question. Tenant's liability under this section reduced by the net proceeds actually collected and paid to or for the benefit of the Landlord, or Landlord's mortgagee, of any insurance effected by Tenant on the risks in question for Landlord's benefit. The parties acknowledge that tenants' liability is limited to the provisions of M.G.L. c. 258.

It is further agreed by the parties that, in the event the Tenant is sued in a court of law or equity, or demand is made upon the Tenant for payment of any damages arising out of the Landlord's performance or non-performance of this Lease, then the Landlord, without reservation, shall indemnify and hold harmless the Tenant against any and all claims arising out of the Landlord's performance or non-performance of the Agreement. In such instances, the Landlord shall be entitled to appear, defend or, otherwise, take part in the matter involved, at



Landlord's election, by counsel of Landlord's own choosing, provided such action by Landlord does not limit or make void any liability of any insurer of Landlord.

13. Fire Insurance

(a) Landlord shall, at its expense, at all times during the Term of the Lease, keep insured in responsible insurance companies authorized to do business in Massachusetts, the Building and all alterations, additions, and improvements thereto and replacements thereof (but not Tenant's personal property) including leasehold improvements made as part of the work against loss or damage by fire and the risks contemplated within the extended and special extended coverage endorsements (as such endorsements may, from time to time, customarily be written in Massachusetts on similar buildings similarly situated) and against such other risks as shall reasonably be required by an institutional holder of a first mortgage in an amount not less than eighty (80) percent of the full replacement cost thereof, including additions, alterations and improvements. Tenant may, but shall not be required to keep insured its personal property.

(b) Each of Landlord and Tenant hereby releases the other and all persons claiming under it, to the extent of its insurance coverage, from any and all liability for any loss or damage caused by fire or any of the extended casualties or any other insured casualty, even if such fire or other casualty shall be brought about by the fault or negligence of the other party, or any persons claiming under it, provided, however, this release shall be in force and effect only with respect to loss or damage occurring during such time as releasor's policies of fire and extended coverage insurance shall contain a clause to the effect that this release shall not affect said policies or the right of releasor to recover thereunder. Each of Landlord and Tenant agrees that the fire and extended coverage and other insurance policies will include such a clause so long as the same is obtainable and is includable without extra cost, or if extra cost is chargeable therefore, so long as the other party pays such extra cost. If extra cost is chargeable therefore, each party will advise the other thereof and the amount thereof, and the other party, at its election, may pay the same but shall not be obligated to do so.

14. Casualty and Taking

A. Damage and Destruction

(a) In case, during the term of this lease, all or any part of the Building containing the Leased Premises shall be damaged or partially or totally destroyed by fire, flood, windstorm, or other casualty at any time, then a just proportion of the Annual Fixed Rent and additional rent shall be abated according to the nature and extent of the damage and Landlord shall repair, replace, restore or reconstruct the Leased Premises into substantially their condition prior to such damage, excluding any of Tenant's personal property. In the event fifty (50) percent or more of the full fair insurable value of the leased premises shall be destroyed or damaged by fire or any other casualty during the last eighteen (18) months of the term of this Lease, then this Lease and the term hereby demised shall terminate at the election of either party on written notice given to the other within thirty (30) days after the occurrence of such damage or destruction.



(b) All proceeds of fire and other casualty insurance shall be held by the first mortgagee of the Building for application to the cost of restoration upon such conditions as such mortgagee may prescribe. If at the time of occurrence of any fire or other casualty covered by insurance there shall be no mortgage of the Building which is held by a bank, trust company, insurance company, pension or profit-sharing fund or other lending institution, such insurance proceeds shall be held, as segregated fund to be applied to the work of restoration, by a bank or trust company located in Massachusetts to be designated by Landlord, and any charges of such bank or trust company shall be paid out of the insurance proceeds.

B. Eminent Domain

(a) In the event that all or substantially all of the Leased Premises shall be condemned or taken in any manner for any public or quasi-public use, this Lease and the term and estate hereby granted shall, forthwith, cease and terminate as of the date of vesting of title. In the event that only a part of the Leased Premises or the Building of which the Leased Premises are a part shall be so condemned or taken, then, effective thereafter as of the date Tenant vacates and removes from the part of the Leased Premises so taken, the Annual Fixed Rent and the Tenant's Additional Rent shall be proportionately reduced, and this Lease shall continue as to such part not so taken unless such remaining part is unsuitable for Tenant's purposes in which event this Lease shall terminate. In the event that only a nonmaterial part of the Leased Premises shall be so condemned or taken, then this Lease shall be and remain unaffected by such condemnation or taking, except that the rent shall be abated to the extent, if any, hereinbefore provided. In the event that only a part of the Leased Premises shall be so condemned or taken, Landlord will, at its expense, restore with reasonable diligence the remaining structural portions of the Leased Premises as nearly as practicable to the same condition as it was in prior to such condemnation or taking.

(b) In the event of termination as hereinabove provided, this Lease and the term and estate hereby granted shall expire as of the date of such termination with the same effect as if that were the date hereinabove set for the expiration of the term of this Lease, and the rent hereunder shall be apportioned as of such date.

(c) Landlord reserves to itself any and all rights to receive awards made for damages to the Leased Premises and the Building and the land upon which the Building is located and the leasehold thereby created, or any one or more of them, accruing by any reason of exercise of eminent domain or by reason of anything lawfully done in pursuance of public authority. Tenant hereby releases and assigns to Landlord all Tenant's rights to such awards, and covenants to deliver such further assignments and assurances thereof as Landlord may, from time to time, request, hereby irrevocably designating and appointing Landlord as its attorney-in-fact to execute and deliver in Tenant's name and behalf all such further assignments thereof.

(d) Notwithstanding the foregoing provisions of this section, Tenant and anyone claiming under it, at its and their expense may, jointly with Landlord, appear, claim and prove, if so allowed, in the proceedings relative to any such awards, and may receive therefrom, such portion thereof as represents the value of the alterations, additions, installations and improvements made by or for the account of Tenant and anyone claiming under it in the Leased



Premises, but not more than the total of expenditures for such alterations, additions, installations and improvements, less depreciation, from the respective dates of the making of such alterations, additions, installments or improvements to the date of the taking computed on a straight-line basis over the term of this Lease which is in force at the time of such taking, or the useful life of such items, whichever is shorter. Such right of Tenant shall be subject and subordinate to the application of all such awards to the prior payment in full of any first mortgage in effect at the time of such taking provided that in applying such awards to the payment of such first mortgage, Landlord's share of such award shall be applied and exhausted first before any portion of Tenant's share of such award is so applied and, further, provided that such right shall not be so subject and subordinate to any mortgage which either (i) affects real estate other than the Building and land upon which it is located or (ii) secures notes, obligations or agreements unrelated to said Building or land or (iii) is held by an affiliate of Landlord. Further, notwithstanding the foregoing provisions, Tenant and anyone claiming under it shall be entitled to appear, claim, prove and receive, if allowed, an award for its personal property and for relocation and moving expenses.

15. Tenant's Other Covenants

Tenant hereby covenants during the Term of the Lease and for such further time as Tenant holds any part of the Leased Premises:

(a) To pay directly to the utility company all charges for all its gas and electricity used in the Leased Premises as determined by separate meter(s) exclusively covering the Leased Premises; to pay for all gas and electricity used to operate the HVAC systems for the Leased Premises; to pay for all electricity used to power Tenant's equipment; and to pay for all telephone and other utilities used or consumed therein and not otherwise furnished or supplied by Landlord pursuant to Section 7 hereof.

(b) Tenant shall be responsible for the removal and proper disposal of its garbage and refuse from the premises. Tenant may use a service for picking up refuse and garbage. Tenant shall pay the cost of removal of all Tenant's refuse or rubbish.

(c) To conform to all reasonable rules made by the Landlord for the care and use of the Building and any appurtenant areas, to the extent made known to Tenant in writing, provided they are uniformly applicable to all tenants and occupants.

(d) Not to permit any use of said Leased Premises that is improper, offensive or contrary to law or ordinance.

(e) To permit the Landlord and the Landlord's agents to enter upon the Leased Premises at reasonable times (or at any time when such entry shall be required by circumstances of emergency) consistent with the safe and proper conduct of Tenant's business to examine the Leased Premises and to cause any repairs to be made pursuant to Section 7, Section 9 and Section 18 hereof, and in the last four (4) months of the Term of the Lease to show the Leased Premises to prospective purchasers and tenants.



(f) To procure any licenses and permits required from regulatory authorities for the conduct of business at the said Leased Premises and the obtaining of sign permits. Tenant shall have the right, at its expense and risk, with the Landlord's consent, which consent shall not be unreasonably withheld or delayed, to affix to its portion of the Building and install on the Leased Premises such signs as it may require subject to applicable laws, ordinances and regulations and preservation restrictions.

(g) At the termination of this Lease, to remove the Tenant's goods and effects and peaceably to yield up said Leased Premises and all additions, alterations and improvements thereto (except such as are removable in accordance with Section 3 or 10-hereof, clean and in good order, repair and condition, damage by fire or other casualty, ordinary use and wear and taking excepted.

16. Default by Tenant/Landlord

(a) All charges, costs and expenses which the tenant is required to pay hereunder, together with all interest and penalties that may accrue thereon in the event of the Tenant's failure to pay such amounts, and all damages, costs and expenses which the Landlord may incur by reason of any default of the Tenant or failure on the Tenant's part to comply with the terms of this lease, shall be deemed to be additional rent and, in the event of nonpayment by the Tenant, the Landlord shall have all the rights and remedies with respect thereto as the Landlord has for the nonpayment of the basic rent.

(b) If the Tenant neglects or fails to pay the rent herein reserved or any part thereof when due and payable, as herein provided, or if the Tenant neglects or fails to perform or observe any of the other covenants, agreements or provisions contained in this Lease which on the Tenant's part, are to be performed or observed, and such neglect or failure to pay rent shall continue for fourteen (14) days after written notice thereof, or any default in the observance of performance of the other covenants, agreements or provisions shall continue for thirty (30) days after written notice given by the Landlord to the Tenant without Tenant's having commenced diligently to remedy such default, or if the leasehold hereby created shall be taken on execution or by other process of law, or if any assignment shall be made of the Tenant's property for the benefit of creditors, or if a receiver, trustee in bankruptcy or similar officer shall be appointed to take charge of all or any part of the Tenant's property by a court of competent jurisdiction, or if a petition is filed by the Tenant seeking an adjudication of itself as bankrupt or insolvent under any bankruptcy law or if an involuntary petition in bankruptcy is filed against the Tenant and the same shall not be dismissed within ninety (90) days from the date upon which it is filed, then, and in any of said cases, the Landlord lawfully may immediately, or at any time thereafter, and without demand or notice enter upon the Leased Premises or any part thereof in the name of the whole and repossess the same as of the Landlord's former estate, and expel the Tenant and those claiming through or under the Tenant and remove their effects, forcibly if necessary, without being deemed liable for any manner of trespass and without prejudice to any remedies which might otherwise be used for arrears of rent or preceding breach of covenant, and upon such re-entry and declaration this Lease shall terminate.



(c) The Tenant shall pay and indemnify the Landlord against all legal costs and charges, including counsel fees lawfully and reasonably incurred in obtaining possession of the Leased Premises after a default of the Tenant or after the Tenant's default in surrendering possession upon the expiration or earlier termination of the term of the lease or enforcing any covenant of the Tenant herein contained.

(d) In the event of default of the Landlord, the Landlord shall pay and indemnify the Lessee against all legal costs and charges, including counsel fees, as well as, but not limited to, moving expenses. No default shall occur until the commencement of litigation.

17. Rights Cumulative; Non-Waiver

It is agreed that each and every of the rights, remedies and benefits provided by this Lease shall be cumulative and shall not be exclusive of any other such rights, remedies and benefits or of any other rights, remedies and benefits allowed by law. No waiver by Landlord or Tenant of any breach by the other of any of its obligations, agreements or covenants hereunder shall operate as a waiver of any subsequent breach or of any other obligation, agreement or covenant, nor shall any forbearance by Landlord or Tenant to seek a remedy for any breach by the other be a waiver of either's rights and remedies with respect to such or any subsequent breach.

18. Right of Self-Help

(a) If Tenant shall default in the performance of any covenant required to be performed by it under this Lease, Landlord may perform the same for the account at the expense of Tenant, after first giving notice to Tenant of such default and of reasonable time to cure the same. Landlord may make any repairs which are essential for the protection and maintenance of the Leased Premises or any other thereof if Tenant fails to commence such repairs within thirty (30) days after notice from Landlord or immediately if emergency conditions require immediate commencement after notice from Landlord. If Landlord at any time is compelled to pay any sum of money by reason of the failure of Tenant to comply with any provision hereof, including the making of repairs, after reasonable notice, or if the Landlord is compelled to incur any expense, including reasonable counsel fees, in instituting, prosecuting or defending any action or proceeding instituted by reason of the default of Tenant hereunder, the sum or sums so paid by Landlord shall be due from Tenant to Landlord as additional rent on the next date following the incurring of such expenses upon which a regular monthly rental payment is due.

(b) If Landlord shall default in the performance of any term or covenant on its part to be performed under or by virtue of any of the terms or provisions of this Lease, Tenant without being under any obligation to do so and, without thereby waiving such default, may remedy such default for the account and at the expense of Landlord immediately and without notice in the case of an emergency or in any other case if Landlord shall fail to commence to remedy such default with all reasonable diligence within thirty (30) days after Tenant shall have notified Landlord in writing of such default and diligently prosecute such remedy to completion. If Landlord shall fail to pay amounts or perform obligations secured by mortgages having priority over this Lease or to pay all or any portion of the real estate taxes, a portion of which is



payable by Tenant as additional rent, Tenant shall have the further right, but not the obligation, to pay or perform such obligations as part of the right of self help granted herein, and any payments or expenses thus incurred by Tenant may be applied in set off against rental obligations under this Lease.

19. Landlord's Covenant of Title and Quiet Enjoyment

Landlord covenants and warrants that Landlord has full right and lawful authority to enter into this Lease for the full terms thereof, and Landlord has good, marketable record title thereto, free and clear of encumbrances, easements and restrictions which may prevent the use of the Leased Premises by Tenant as contemplated herein. Landlord further covenants that, subject to the terms and provisions hereof and so long as the Tenant shall faithfully perform its undertaking hereunder and the terms, covenants and conditions hereof, including payment of rent, additional rent and other charges, the Tenant, its successors and assigns, shall and may peaceably and quietly have hold, and enjoy the Leased Premises for the Term of the Lease.

Landlord or Landlord's agents have made no representations or promises with respect to the Building, the land or the Leased Premises except as herein expressly set forth; and no rights, easements or licenses are acquired by Tenant by implication or otherwise except as expressly set forth in the provisions of this Lease. The taking possession of the Leased Premises by Tenant shall be conclusive evidence as against Tenant, that Tenant accepts said Leased Premises and the Building and that same were in good and satisfactory condition at the time such possession was so taken, excepting any items agreed to in writing between the parties as not having been completed.

Landlord and its agents shall not be liable for any damage to property of Tenant or of others entrusted to employees of the Building, nor for the loss of or damage to any property of Tenant by theft or otherwise. Tenant shall give prompt notice to Landlord in case of accidents in the Leased Premises or in the Building or of defects therein or in any fixtures or equipment. Landlord shall give prompt notice to Tenant of its knowledge of accident in the Leased Premises or accidents affecting services, access or other appurtenances to the Leased Premises, or (to the extent caused or claimed to arise from or be related to, Tenant's use or occupancy under this lease) in the Building or of defects therein or in any fixtures or equipment.

20. Notices

(a) Any notice from the Landlord to the Tenant relating to the premises or the occupancy thereof or the termination of this Lease shall be deemed duly served if sent by certified or registered mail addressed to Tenant at 107 Merrimack Street, Lowell, Massachusetts 01852, as well as the City Manager, 2<sup>nd</sup> Floor, 375 Merrimack Street, Lowell, MA 01852 and City Solicitor, Law Department, 3<sup>rd</sup> Floor, 375 Merrimack Street, Lowell, MA 01852 (or such other address as Tenant may hereinafter designate in writing). Any notice from the Tenant to the Landlord shall be deemed duly served if sent by certified or registered mail to Landlord at 87 Pevey Street, Lowell, Massachusetts 01851, or such other address as landlord may, hereinafter, designate in writing.

21. Miscellaneous Provisions

(a) This Agreement contains the entire agreement between the parties and shall not be modified in any manner except by an instrument in writing executed by the parties.

(b) This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

(c) If the Landlord shall sell the Leased Premises or transfer its entire interest in this Lease to a buyer or transferee who will assume and agree to perform and observe the obligations, covenants and conditions by the Landlord herein to be performed or observed, the Landlord, from and after the date of such sale or transfer, shall be forever released and discharged from any and all of its obligations hereunder, except those accruing during the period of its ownership.

(d) Tenant agrees that it will not record this Lease. Both parties shall, upon the request of either, execute and deliver a notice or short form of this Lease in such form, if any, as may be permitted by applicable statute.

(e) The terms "Landlord" and "Tenant", wherever used herein, shall include and all of the provisions hereof shall bind and inure to the benefit of, the heirs, executors, administrators, successors and assigns of the respective parties hereto. The use of the neuter pronoun in reference to Landlord or Tenant shall be deemed to mean the appropriate pronoun applicable to the number or gender of the person to whom or which it refers, as the context may require.

(f) In any case where either party hereto is required to do any act, delay caused by or resulting from Act of God, war, civil commotion, fire or other casualty, labor difficulties, shortages of labor, materials or equipment, governmental regulations, act of the other party, or other causes beyond such parties' reasonable control, other than financial inability, shall not be counted in determining the time during which such act is to be performed, whether such time be designated by a fixed date, a fixed time or a "reasonable time".

(g) It is further agreed that the City of Lowell may terminate this Agreement at any time, with or without cause, upon fourteen (14) days' written notice to the other party, sent by certified mail, to the usual place of business of the other party.

22. Landlord agrees that its attention has been called to the provisions of the "Reserve System" Ordinance of the City of Lowell, which is now incorporated in the "The Code of Ordinances City of Lowell, Massachusetts", passed by the City Council on December 23, 2008 and Amendments thereto and that each purchase order, so-called, issued in accordance with Section 28-32 of said Code to cover the services to be rendered under this Agreement shall be made a part hereof by reference. It is further agreed that no obligation shall be considered to have incurred under this Agreement unless and until a purchase order shall have been duly issued and approved. And further, that the obligation incurred shall be limited to the amount set forth in the purchase order or purchase orders duly issued and approved.



23. This Contract is subject to all laws, federal, state and local, which are applicable to this Contract and it is assumed that the Landlord is cognizant thereof.

24. This Lease Agreement shall be subject to annual appropriation.

25. Non-collusion:

The undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club or other organization, entity, or group or individuals.

26. Certification Ch. 7C, s.38:

Landlord acknowledges receipt of a copy of the Massachusetts General Laws, Chapter 7C, Section 38 and agrees to comply therewith.

27. Codes. 28, Article V:

It is understood and agreed by the Tenant and the Landlord that pursuant to the Code of the City of Lowell, Chapter 28, Article V, a Contract Performance Record form must be completed on this Lease by the Department Head or his/her designee, who is supervising this Lease, and such Contract Performance Record Form must be submitted to the City Manager, City Auditor, and Purchasing Agent prior to release of final payment under this Lease. The Contract Performance Record Form shall be completed within thirty (30) days of the termination date of this Lease. In the event that the City fails to timely complete its Contract Performance Record Form, final payment shall become due. If requested by the Landlord a copy of the Contract Performance Record Form shall be furnished to the Landlord.

28. The undersigned certifies, under penalties of perjury, that all municipal fees, including real estate taxes, due and owing to the City of Lowell have been paid in full.

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed, and their respective seals hereto affixed by their respective officers or other persons thereunto duly authorized as of the day and year first-above written.

APPROVED:

NICHOLAS C. SARRIS, as trustee of One Hundred Seven  
Merrimack Street Realty Trust

By \_\_\_\_\_  
Eileen M. Donoghue  
City Manager

By: \_\_\_\_\_  
Nicholas C. Sarris

\_\_\_\_\_  
Social Security or Federal ID Number

APPROVED AS TO FORM:

CITY OF LOWELL

\_\_\_\_\_  
Christine P. O'Connor  
City Solicitor

\_\_\_\_\_  
Kerran Vigroux  
Director, Health and Human Services

\_\_\_\_\_  
Karen O'Beirne  
Interim City Auditor

\_\_\_\_\_  
P. Michael Vaughn  
Chief Procurement Officer

Date \_\_\_\_\_





## City of Lowell - Law Department

375 Merrimack Street, 3<sup>rd</sup> Floor • Lowell MA 01852-5909  
Tel: 978.674.4050 • Fax: 978.453.1510 • [www.lowellma.gov](http://www.lowellma.gov)

Christine P. O'Connor  
*City Solicitor*

Rachel M. Brown  
*1<sup>st</sup> Assistant City Solicitor*

Gary D. Gordon  
John Richard Hucksam, Jr.  
Adam LaGrassa  
Stacie M. Moeser  
Elliott J. Veloso  
*Assistant City Solicitors*

November 15, 2019

City Manager Eileen M. Donoghue  
Mayor William Samaras  
And  
Members of the City Council

Re: Lease Agreement – Health, Human Services and Recreation Department

Dear Manager Donoghue, Mayor Samaras and Members of the City Council:

Attached is a vote authorizing the City Manager to enter into a ten year lease with Nicholas Sarris as Trustee of One Hundred Seven Merrimack Street Realty Trust for 10,368 square feet of property located at 107 Merrimack Street. The property will house the Health, Human Services and Recreation Department. The cost is \$22.81 per square foot, with an annual payment of \$236,499.00. Each year contains an adjusted per square foot cost, so that in the final year of the lease, the annual payment is \$268,908.00.

Very truly yours,

Christine P. O'Connor  
City Solicitor